Supreme Court, U.S.
FILED
OCT 1 1962
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 122.

OCTOBER TERM 1962

CITY OF KANSAS CITY, MISSOURI,
a Municipal Corporation,
Petitioner,

vs.

FEDERAL PACIFIC ELECTRIC COMPANY,
Respondent,

AND

CITY OF KANSAS CITY, MISSOURI,
a Municipal Corporation,
Petitioner,

vs.

GENERAL ELECTRIC COMPANY,
Respondent.

BRIEF OF RESPONDENT GENERAL ELECTRIC COMPANY IN OPPOSITION TO PETITION FOR CERTIORARI

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IN THE

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No. 422.

OCTOBER TERM, 1962.

CITY OF KANSAS CITY, MISSOURI,
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vs.

FEDERAL PACIFIC ELECTRIC COMPANY,
Respondent.

AND

CITY OF KANSAS CITY, MISSOURI,
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GENERAL ELECTRIC COMPANY,
Respondent.

BRIEF OF RESPONDENT GENERAL ELECTRIC COMPANY IN OPPOSITION TO PETITION FOR CERTIORARI.

COURT RULE INVOLVED.

Supreme Court of the United States, Rule 20—*Certiorari to Court of Appeals Before Judgment.*

A writ of certiorari to review a case pending in a court of appeals, before judgment is given in such court, will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court. See United States v. Bankers Trust Co., 294 U.S. 240; Railroad Retirement Board v. Alton R. Co., 295 U.S. 330; Rickert Rice Mills v. Fontenot, 297 U.S. 110; Carter v. Carter Coal Co., 298 U.S. 238; Ex parte Quirin, 317 U.S. 1; United States v. United Mine Workers, 330 U.S. 258; Youngstown Co. v. Sawyer, 343 U.S. 579.

ADDITIONAL STATEMENT OF THE CASE.

The two civil actions which are the subject of this single petition seek treble damages under the anti-trust laws. No relief other than money judgment is sought.

The district court entered judgment in each case on July 15, 1962. Notice of appeal was filed the same day and the appeal was docketed in the United States Court of Appeals for the Eighth Circuit on July 20, 1962. The Petitioner filed a motion to advance the case on the docket of that court on July 26, 1962, and the Respondents advised the court that they did not oppose the motion, but felt that briefing time should not be shortened. The court did not formally rule on the motion but, on August 8, 1962, issued a docket setting the case for hearing on October 2, 1962. The brief and record of the Appellant (Petitioner here) were filed on August 31, 1962, and the Appellees' brief was filed on September 25, 1962. This petition for certiorari was not filed until September 10, 1962.

ARGUMENT.

The Petition Is Premature Since There Is No Showing of Imperative Public Importance of Immediate Decision Within The Meaning of Rule 20 of This Court.

We do not minimize the importance of these cases or of the questions presented. Rule 20 of this Court suggests, however, that the normal appellate processes are to be bypassed only in the most extraordinary cases, invplving substantial public importance, and in which time is of the essence.

In *Cooper* v. *Aaron*, 357 U.S. 566 (1958), an order postponing the effective date of a desegregation plan had been entered on June 23, 1958. It was imperative that there be a review of this order prior to the following September, in time for the opening of school. This Court nevertheless called for the hearing and decision of the case by the Eighth Circuit Court of Appeals, and denied the petition for accelerated grant of certiorari.

All of the cases cited in Rule 20 involve emergency conditions requiring immediate decision. In *United States* v. *Bankers Trust Co.*, 294 U.S. 240 (1935), the validity of clauses in contracts and leases calling for payment in gold was called into question, and pending decision the parties to these contracts were put to serious uncertainties as to what to pay or what kind of tender to make. *Railroad Retirement Board* v. *Alton Railway Co.*, 295 U.S. 330 (1935), involved the validity of a retirement plan affecting thousands of employees and calling for continuing contributions by employees. *Rickert Rice Mills* v. *Fontenot*, 297 U.S. 110

(1936) and *Carter* v. *Carter Coal Co.*, 298 U.S. 238 (1936), dealt with the validity of excise taxes on processors, which were then being collected, and in which refunds would be extremely difficult if the taxes were to be held invalid since they were passed on to the ultimate consumers. *Ex parte Quirin*, 317 U.S. 1 (1942), involved the validity of a wartime trial of German spies by a military commission at a time when it might be expected that other spies would be landed. *United States* v. *United Mine Workers*, 330 U.S. 258 (1947), involved the validity of executive action designed to prevent the shutdown of vital industries, by reason of labor disputes.

To these cases may be added *Wilson* v. *Girard*, 354 U.S. 524 (1957), involving a district court injunction against a trial by a foreign government.

The cases which are the subject of the present petition are important cases, but we do not believe that they are emergency cases where irreparable injury may occur unless there is an immediate determination by this Court. The ultimate resolution of the question presented may be important in many other cases, but this is frequently true of cases on the docket of this Court. It is submitted that there is no need for undue haste at the expense of thorough deliberation.

There appears to be little basis in fact for the petitioner's assertion that trial preparations in the other pending cases similar to this one are at a standstill. This Court of course has judicial notice of the work of the Murrah committee and of the steps it is taking to promote orderly discovery and trial preparation.

The proceedings in the court of appeals are progressing expeditiously and should be allowed to continue to final judgment there.

CONCLUSION.

The present petition should be denied, or consideration thereof should be deferred until judgment in the court of appeals.

Respectfully submitted,

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